IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

MFA.No. 1215 of 1995(A)

O.P.(M.V.)NO.1000/1989 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR.

APPELLANT: PETITIONER:

SAMEERA ALIAS NAZEERA (MINOR), REP. BY HER MOTHER NAZEEMA, RESIDING AT KABEER NIVAS, P.O.KATHIROOR, THALASSERY.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS: RESPONDENTS:

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1. E.ABDULKHADER, RESIDING AT SHAPIER MANZIL, CHAVAKKAD, THRISSUR.

2. SIDHARTHAN, S/O.KRISHNAN, RESIDING AT VALAKKARAN HOUSE, ORUMANAYOOR, THRISSUR.

3. THE NEW INDIA ASSURANCE COMPANY LIMITED, THRISSUR.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/10/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.1215 of 1995

Dated this the 19th October, 2007.

J U D G M E N T

A minor represented by her mother has filed this appeal claiming compensation. The minor met with an accident on 12.8.1996. She filed the Original Petition claiming compensation impleading owner, driver and Insurer on 19.9.1989. There was a prayer to condone the delay. The Tribunal took a view that since the Original Petition was filed three years after the date of accident, the delay in filing the petition cannot be condoned. The Tribunal relied on a decision reported in **Asokan v. State of Kerala** (1992 (1) KLT 593) to hold that the Tribunal has no jurisdiction to condone the delay, if the same is more than one year. The principle laid down in that decision can have no application to the facts of this case. The Tribunal failed to note that, that was a case in which the claim petition was filed by a major and not by a minor. But in this case, on the date of accident, on the date of filing of the Original Petition, and even on the date of filing of the appeal, the petitioner was a minor.

2. In **Musthafali v. Subair** (1991 (2) KLT 593), a Division Bench of this Court considered an identical question and held that the delay can be condoned. It was also held that application for compensation filed by a minor attracts all provisions of Section 6 of the Limitation Act. So, the appellant could have awaited till she attains majority. Therefore, dismissal of the Original Petition relying on the principle laid down in Asokan's case, (supra) is illegal and unsustainable. The Tribunal has not considered any other point. So, the matter has to go back.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing the Original Petition is hereby set aside. O.P.(M.V.) No.1000/1989, is remanded to the Motor Accidents Claims Tribunal, Thrissur, for fresh disposal, in accordance with law.

Parties shall appear before the Tribunal on 13.11.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.1215 of 1995

J U D G M E N T

Dated:19th October, 2007.